



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1997

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

97-
OR96-0034

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35920.

The Tarrant County Auditor's Office (the "auditor") received a request for the cellular telephone records of the sheriff, a commissioner, and the district clerk from October, 1994 to the date of the request. You claim that the auditor is a member of the judiciary and that, therefore, the requested information is not subject to the provisions of chapter 552. You also claim that, if the auditor is subject to the requirements of chapter 552, the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.117, and 552.222 of the Government Code. Finally, you claim that the request is overbroad and that, as the requestor has not clarified it, the auditor has no obligation to respond. You have submitted samples of the requested information.¹ We have considered your arguments and reviewed the sample documents.

We first address the auditor's argument that he is a member of the judiciary and, therefore, not subject to the provisions of chapter 552 of the Government Code. In Open Records Decision No. 646 (1996), this office concluded that the test for determining whether a governmental body was a member of the judiciary is to look at the function the governmental body performs. Open Records Decision No. 646 (1996) at 3. After reviewing the function that an auditor performs, we conclude that the county auditor is not a member

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of the judiciary for purposes of chapter 552 of the Government Code. See Local Gov't Code § 84.006(a).

The auditor next argues that he does not fall within one of the enumerated provisions in section 552.003 of the Government Code. However, we believe that, although the auditor is appointed by district judges, the auditor falls within the provisions of section 552.003(10). That section provides that "governmental body" means "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." The auditor argues that his position is that of an "office" and that, therefore, he does not fall within the definition of a governmental body. However, this office has previously held that the sheriff's office is subject to the provisions of chapter 552, as it was supported by public funds. Open Records Decision No. 78 (1975). Accordingly, we conclude that the county auditor is subject to the provisions of chapter 552 as a "governmental body" within the meaning of section 552.003.

We now address the auditor's arguments that the requested information need not be disclosed under chapter 552. First, the auditor claims that the request for information is overbroad. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the auditor must make a good-faith effort to relate the request to information in the auditor's possession and must help the requestor to clarify his request by advising him of the types of information available. Here, although the auditor did ask for clarification, the auditor did not advise the requestor of the types of information that are available. Additionally, we note that a request for records made pursuant to chapter 552 of the Government Code may not be disregarded simply because a citizen does not specify the exact documents he desires.² Open Records Decision No. 87 (1975).

²We also note that the "administrative inconvenience" of providing public records is not grounds for refusing to comply with the mandates of the Open Records Act. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.³ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). This office has previously held that section 552.108 protects from required public disclosure the cellular mobile phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities. Open Records Decision No. 506 (1988). We conclude that section 552.108 also excepts from required public disclosure the numbers called on the cellular telephones assigned to the sheriff. However, section 552.108 will not except from disclosure the other parts of the bills; *e.g.*, airtime, date, time, minutes. Section 552.108 will except from disclosure only the numbers of the cellular phones assigned to the sheriff’s department and the numbers called.

We now address whether the requested cellular telephone records from the commissioner are excepted from disclosure under either section 552.101 or section 552.107. You claim that the commissioner’s common-law right to privacy will be violated if the cellular telephone records are disclosed. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov’t Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have reviewed the submitted cellular telephone bills and

³The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

find nothing in them that implicates the commissioner's privacy rights. Therefore, the commissioner's cellular telephone bills may not be withheld under section 552.101. *See* Open Records Decision No. 506 (1988).⁴

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We conclude that section 552.107(1) does not except the requested information from required public disclosure, as there is no "privileged information" in the bills.⁵

We note that some of the numbers called on the commissioner's cellular phone may be excepted from disclosure under section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. If you can readily ascertain which numbers called are the home telephone numbers of government employees, and know that they have made the election under section 552.024 of the Government Code to keep this information confidential at the time the request for information was received, you must withhold the home telephone numbers called on the commissioner's telephone bills. You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

As for the final request for the cellular telephone bills of the district clerk, we conclude that the information is not "public information" within the meaning of section 552.002 of the Government Code. You have provided information to this office establishing that the county does not have access to the district clerk's telephone records, that the district clerk does not seek reimbursement for telephone calls made on that phone, and that, therefore, the district clerk's cellular telephone bills are not information "collected,

⁴We note that section 552.117 applies to home telephone numbers, not to cellular mobile phone numbers paid for by the county and intended for use at work for county business. Different considerations apply if the individual official or employee pays for the purchase and installation of and calls to and from a mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business. Open Records Decision No. 506 (1988). Here, it appears that the commissioner's cellular telephone was provided for and paid for by the county. Therefore, you may not withhold the commissioner's cellular telephone number under section 552.117.

⁵We note that you did not provide any argument as to why section 552.103 applies to the requested information. Therefore, you may not withhold the requested information under this exception.

assembled, or maintained" by or for a governmental body. Accordingly, you need not disclose the district clerk's cellular telephone bills.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 35920

Enclosures: Submitted documents

cc: Mr. Dave Harmon
Reporter
Fort Worth Star-Telegram
P.O. Box 1870
Fort Worth, Texas 76101
(w/o enclosures)